

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

PAMELA MOSES

Plaintiff,

vs.

No. 14-02715-SHL-dkv

SHELBY COUNTY SHERIFF,
BILL OLDHAM & OFFICERS,
SHELBY COUNTY HOMELAND,
SECURITY, ALLIEDBARTON, and
SECURITY SERVICES LLS,

Defendants.

REPORT AND RECOMMENDATION FOR *SUA SPONTE* REMAND

Before the court is the September 15, 2014 Notice of Removal of the case *Moses v. Shelby Cnty. Sherriff, et al.*, No. CH-14-1316, from the Chancery Court of Shelby County, Tennessee, filed by the *pro se* plaintiff, Pamela Moses ("Moses"), (Notice of Removal, ECF No. 1), accompanied by a *pro se* motion seeking leave to proceed *in forma pauperis*, (ECF No. 2). On September 22, 2014, the court issued an order granting Moses leave to proceed *in forma pauperis*. (ECF No. 6.) This case has been referred to the United States Magistrate Judge for management and for all pretrial matters for determination and/or report and recommendation as appropriate. (Admin. Order 2013-05, Apr. 29, 2013.)

Pursuant to Local Rule 4.1(a), service will not issue in a *pro se* case where the *pro se* plaintiff has been granted leave to proceed *in forma pauperis* until the complaint has been screened under 28 U.S.C. § 1915(e)(2). The clerk is authorized to issue summonses to *pro se* litigants only after that review is complete and an order of the court issues. The court is required to screen *in forma pauperis* complaints and to dismiss any complaint, or any portion thereof, if the action: (1) is frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Because Moses has been granted leave to proceed *in forma pauperis*, this report and recommendation will constitute the court's screening.

In her Notice of Removal, Moses asserts that removal to this court is proper because the case involves constitutional and civil rights issues. (Notice of Removal 1, ECF No. 1.) However, Moses is prohibited from removing this case to the federal court by 28 U.S.C. § 1441, which states that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the *defendant* . . . to the district court of the United States for the district and division embracing the place where such

action is pending.” 29 U.S.C. § 1441(a) (emphasis added). As Moses is the plaintiff in the state court proceeding, she is precluded by § 1441(a) from removing her case to the federal court. Accordingly, it is recommended that this case be dismissed *sua sponte* for improper removal, and that it be remanded to the Chancery Court of Shelby County pursuant to 28 U.S.C. § 1447.

Respectfully submitted this 23rd day of September, 2014.

s/ Diane K. Vescovo
Diane K. Vescovo
United States Magistrate Judge

NOTICE

Within fourteen (14) days after being served with a copy of this report and recommended disposition, a party may serve and file written objections to the proposed findings and recommendations. A party may respond to another party's objections within fourteen (14) days after being served with a copy. Fed. R. Civ. P. 72(b)(2). Failure to file objections within fourteen (14) days may constitute a waiver of objections, exceptions, and further appeal.